



Ezra, Brutzkus, Gubner, LLP

Employment Law Update

MEAL BREAK POLICY REVIEW ENCOURAGED

On April 16, 2007 the California Supreme Court, in a controversial decision, *Murphy v. Kenneth Cole Productions, Inc.*, held that the “one hour of additional pay” sanction established by Labor Code Section 226.7 for meal and rest period violations is a “wage,” not a penalty. Therefore, it is subject to a three year statute of limitations, or four years if the claim is made under the Unfair Competition Law of Business & Professions Code Section 17,200. This decision is expected to result in more government audits and encourage more litigation, especially class actions.

The sanction of one hour of pay is imposed if an employer does not “provide” employees with a one half hour meal break at the appropriate time or times or “authorize and permit” the appropriate rest periods. The parameters of the employer’s duty to “provide” or “authorize and permit” remain unclear, but the Supreme Court in *Murphy* hinted that the employee must be “forced to forgo” meal and rest periods or “forced to work through meal and rest periods” to receive the extra hour of pay.

Although there are still important issues unresolved in this area, the *Murphy* decision will require employers to review their current policies and practices. First, because the additional one hour of pay is a wage all the record keeping requirements applicable to wages apply. The records must be retained for a minimum of three years, but it is recommended that they be maintained for at least four years, if not seven. Also, employers should look at the following payroll issues:

1. The proper identification of the sanction as wages in all records.
2. The automatic and prompt payment of the one additional hour of pay with other wages.
3. The proper inclusion of the sanction information reported in “gross wages earned” in itemized wage statements and pay stubs.
4. The proper reporting of the extra hour of pay sanction as wages on payroll registers and other pay records.
5. The taxability of the sanction payment.
6. The proper inclusion of the sanction with all other wages in the final pay check.

7. The record keeping obligations for meal periods.
8. The value of an attestation form to verify that employees have received meal and rest periods in accordance with the law.
9. The circumstances under which the additional hour of pay is owed when meal and rest periods are not “provided” or “authorized.”
10. The method of calculation the additional hour of pay at the employee’s “regular rate.”
11. The effect of “rounding” practices.
12. Should the time keeping system “lock out” employees to prevent clocking in before a one half hour meal break is complete?
13. Whether the missed meal period creates overtime.
14. The number of sanctions that can be owed in a given work day.
15. Scheduling meal breaks and rest periods.

As mentioned above there are still many unanswered questions about the interpretation and application of the laws in this area. It is anticipated that the California Supreme Court will issue at least one decision this year that will further clarify employers’ responsibilities and liabilities under these laws. The **EB+G Update** will keep you up to date on these developments.

Ezra, Brutzkus, Gubner LLP offers its clients advice and counsel in all areas of labor and employment law . **Richard L. Mann** has 30 years of experience representing employers around the nation in all aspects of labor and employment law including discrimination, wrongful termination and wage-hour disputes and traditional labor relations. Mr. Mann has represented employers in a variety of industries including apparel, hospitality, manufacturing, transportation, entertainment, packaging and various service industries.

*The **EB+G Update** is intended to present a brief overview of current legal issues. Nothing contained in this Update should be understood to be legal advice on a specific, individual matter. It is general commentary on the subjects discussed. Your questions and comments are welcome.*